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ZHANG JING

v.

NG FONG YONG

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HIGH COURT MALAYA, KUALA LUMPUR
NORAINI ABDUL RAHMAN J
[ORIGINATING SUMMONS NO: 24-188-10-2013]
22 NOVEMBER 2013

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CIVIL PROCEDURE: *Judgment - Reciprocal enforcement of judgment - Registration - Whether interim care and control order made in Subordinate Courts of Singapore could be registered in High Court of Malaya and enforced in Malaysia - Reciprocal Enforcement of Judgments Act 1958, ss. 2 & 3*

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On 11 June 2013, the Subordinate Courts of the Republic of Singapore ordered, *inter alia,* that (i) the defendant husband ('DW') surrenders Ng Lee Zhengyu and Ng Thong Yi ('two children') to the plaintiff wife ('PW') within 48 hours of the order; and (ii) the parties shall be granted joint custody, with interim care and control of the children be granted to PW. Subsequently, PW made an application *vide* encl. 1 that the

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interim care and control order be registered in the High Court of Malaya and enforced in Malaysia. The issue for determination was whether the Malaysian Court could allow PW's application.

Held (dismissing encl. 1):

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(1) Section 3 of the Reciprocal Enforcement of Judgments Act 1958 ('Act') applied to the judgment of the High Court of the reciprocating countries of which Singapore was one. However, in the present case, the judgment was from the Subordinate Court of Singapore. Therefore, the judgment was not applicable to be enforced in Malaysia under the Act. (paras 6 & 7)

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(2) Sections 2 and 3 of the Act provides that judgment should be for a sum of money in respect of compensation or damages to an injured party. The order sought by PW was not for a money judgment. Therefore, the application does not come under the definition of

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judgment. Further, s. 2 also provides that an action *in personam* should not include any proceedings in connection with any matrimonial matter or guardianship of infants. However, the present case involved matrimonial cause or matrimonial proceedings or guardianship of infants. Hence, the application as in encl. 1 was

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excluded and the court had no jurisdiction to allow PW's claim. (paras 8-11 & 13)

Legislation referred to:
Reciprocal Enforcement of Judgments Act 1958, ss. 2, 3

For the plaintiff - Faizan; M/s Faizan & Co

Reported by Sandra Gabriel

JUDGMENT

Noraini Abdul Rahman J:

[1] This is an application by the plaintiff wife (PW) for the following order:

(i) Perintah Mahkamah di Subordinate Courts in the Republic of Singapore bertarikh 11 Jun 2013 berkenaan Penjagaan ("interim care and control") kedua-dua orang anak bernama Ng Lee Zhengyu (Malaysian Passport No. A19941793) dan Ng Thong Yi (Sijil Kelahiran No. T1134270H) diserahkan kepada Plaintif, didaftarkan di Mahkamah Yang Mulia ini dan dikuatkuasakan di Malaysia;

(ii) Berdasarkan Perintah di atas, Defendan menyerahkan kedua-dua anak bernama Ng Lee Zhengyu (Malaysian Passport No. A19941793) dan Ng Thong Yi (Siil Kelahiran No. T1134270H) kepada Plaintif;

(iii) Lain-lain relif atau perintah yang difikirkan patut dan sesuai oleh Mahkamah Yang Mulia ini.

[2] Plaintiff's counsel did not prepare a written submission but submitted orally. He had not cited the laws enabling this court to grant the order prayed for. As such this court has to do its own research in order to come up with a fair and just decision.

Facts

[3] Both parties were married on 18 May 2005 at Jabatan Pendaftaran Negara in Putrajaya. The wife was born in China but now is a citizen of Singapore. The husband is a Malaysian citizen. They have two children of the marriage by the name of Ng Lee Zhengyu and Ng Thong Yi. On 11 June 2013 the Subordinate Courts of the Republic of Singapore granted the following order:

IN THE SUBORDINATE COURTS OF THE REPUBLIC OF SINGAPORE

Divorce Suit No: D428 of 2013/Q

Between

ZHANG JING (NRIC NO:58062379H) ... Plaintiff

And

NG FONG YONG (NRIC NO: 580859261) ... Defendant

ORDER OF COURT

1. Date of Order:

   11 Jun 2013

2. Nature of Hearing (In Chambers):

   Summons No: 7176 of 2013/W

   Summons No: 8086 of 2013/C

3. Name of Judge Making the Order:

   District Judge Mr. Wong Sheng Kwai

4. Parties present at the Hearing:

   (a) Plaintiff's Counsel

   (b) Defendant's Counsel

5. Orders Made:

   (a) That the Defendant is to surrender the children, Ng Lee Zhengyu (Malaysian Passport No: A19941793) and Ng Thong Yi (Birth Certificate No: T1134270H) to the Plaintiff within 48 hours of this Order (by 5pm 13 June 2013);

   (b) That the parties shall be granted joint custody, with interim care and control of the children to be granted to the Plaintiff;

   (c) That the Defendant shall be granted reasonable access (in manner to be agreed between the parties);

   (d) That both parties shall not take the children out of Singapore until the resolution of the Ancillary Matters with respect to the children or further order;

   (e) That the children's passports shall be surrendered to the Defendant's lawyers, M/s East Asia Law Corporation, to hold as stakeholders pending resolution of this matter;

(f) That the Defendant's lawyers shall accompany the Defendant in the event that the Defendant needs to renew the social visit passes or re-entry permits of the children at the Immigration & Checkpoints Authority of Singapore ("ICA");

(g) That Social Welfare Report(s) ("SWR") to be made in respect of Summons No. 8086 of 2013/C and for registry to inform parties when report is ready; and

(h) That costs to be reserved on determination of the issue.

Signed :

Registrar :

Date :

PENAL NOTICE

If you, within named ZHANGJING or NG FONG YONG neglect to obey this order by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same.

[4] On 24 June 2013, the Subordinate Courts of Singapore issued the certificate of making the interim judgment final (divorce). The certificate is reproduced as follows:

IN THE SUBORDINATE COURTS OF THE REPUBLIC OF SINGAPORE

CERTIFICATE OF MAKING INTERIM JUDGMENT FINAL (DIVORCE)

Referring to the Judgment made in this action on the 24th day of June 2013, whereby it was ordered that the marriage as that and solemnized on the 18th day of May 2005 IBU PEJABAT JPNM PUTRAJAYA between ZHANG JING (S8062379H), the Plaintiff, and NG FONG YONG (S80859261), the Defendant, be dissolved by reason that unless sufficient cause be shown to the Court within 3 months from the making thereof why that Judgment should not be made final and no such cause having been shown, it is hereby certified that the Judgment was on this date made final and that the said marriage was thereby dissolved.

DEPUTY REGISTRAR
SUBORDINATE COURTS

Date:

[5] The issue is whether the Malaysian Court can allow the PW's application as in encl. 1. I am dismissing the PW's application for the following reasons.

[6] The Reciprocal Enforcement of Judgments Act 1958 applies to the judgment of the High Court of the reciprocating countries of which Singapore is one. Section 3 of the Act provides:

> Part II to extend to reciprocating countries
>
> 3. (1) This Part shall extend to judgments given in the Superior Courts of reciprocating countries.
>
> (2) The Yang di Pertuan Agong may, if he is satisfied that in the event of the benefits conferred by this Part being extended to judgments given in the Superior Courts of any country or territory outside Malaysia, substantial reciprocity of treatment will be assured as respects the enforcement in the country or territory of judgments given in the High Court, ...
>
> (3) Any judgment of a Superior Court, other than a judgment of such a court given on appeal from a court which is not a Superior Court, shall be a judgment to which this Part applies, ...

[7] In our case, the judgment is that of the Subordinate Court of Singapore. Therefore, that judgment is not applicable to be enforced in Malaysia under the Reciprocal Enforcement of Judgments Act 1958.

[8] The order sought by the PW is not for a money judgment. Section 2 of the same Act provides:

> "judgment", means a judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party, ...

[9] In our case, the application sought to be registered in Malaysia an interim care and control of the two children and for their passports to be handed over to the PW. Therefore the application does not come under the definition of 'judgment'.

[10] The definition of 'action *in personam*', in the s. 2 of the same Act provides:

> "action *in personam*" shall not be deemed to include any matrimonial cause or any proceedings in connection with any matrimonial matters, ... or guardianship of infants.

[11] The case before us involves matrimonial cause or matrimonial proceedings or guardianship of infants. Hence, from the above definition, the application as in encl. 1 is excluded.

[12] Section 3 of the same Act provides:

> Part II to extend to reciprocating countries
>
> 3. (1) This Part shall extend to judgments given in the Superior Courts of reciprocating countries.
>
> (2) ...
>
> (3) Any judgment of a Superior Court, other than a judgment of such a court given on appeal from a court which is not a Superior Court, shall be a judgment to which this Part applies, if:
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> (a) it is final and conclusive as between parties thereto;
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> (b) there is payable there under a sum of money, not being a sum payable in respect of taxes or other charge of a like nature or in respect of a fine or other penalty; and
> ...

[13] Again, the provision above speak of a money judgment which is the case here. Hence, this court has no jurisdiction to allow PW's claim as in encl. 1.

[14] Based on the above, I am dismissing the PW's claim with no order as to costs.